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No. 06-1210

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

GENERAL ELECTRIC COMPANY,

Petitioner,

v.

COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Hampshire

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether N.H. Rev. Stat. Ann. § 77-A:4, IV facially discriminates against foreign commerce by permitting a deduction for dividends received from foreign corporations doing business in New Hampshire, while denying a deduction for dividends received from foreign corporations not doing business in New Hampshire.

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

STATUTES

N.H. Legislative Service, 2007 Legislative Session, No. 3, Ch. 146, H.B. 598:

AN ACT repealing certain foreign dividend deductions under the business profits tax and repealing an exemption to the real estate transfer tax.

Be it Enacted by the Senate and House of Representatives in General Court convened:

146:1 Repeal. The following are hereby repealed:

I. RSA 77-A:4, IV, relative to a corporate deduction of gross business profits derived from dividends paid to the parent by a subsidiary whose gross business profits have already been subject to taxation.

II. RSA 77-A:4, V, relative to a joint venture and partnership deduction of gross business profits derived from distributions from the joint venture or partnership to another business organization and which have already been subject to taxation.

III. RSA 77-A:4, VI, relative to corporate deduction of a distribution to a parent company by a domestic international sales corporation where the profits from which the distribution is made have already been subject to taxation.

IV. RSA 78-B:2, XIX, relative to an exemption from real estate transfer tax for transfers of title pursuant to merger, consolidation, or reorganization

of 2 or more Internal Revenue Code section 501(c)(3) or 501(c)(2) organizations.

146:2 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 18, 2007)

(Effective Date: August 17, 2007)

SUMMARY OF THE ARGUMENT

New Hampshire Rev. Stat. Ann. § 77-A:4, IV has been repealed, providing further demonstration of the hypothetical nature of the Petitioner's claim. Accordingly, the decision of the New Hampshire Supreme Court does not warrant certiorari review.

ARGUMENT

New Hampshire Rev. Stat. Ann. § 77-A:4, IV has been Repealed, Further Demonstrating that this Case is a Hypothetical and does not Warrant Certiorari Review.

Subsequent to the filing of Respondent's Brief in Opposition, the New Hampshire legislature repealed N.H. Rev. Stat. Ann. § 77-A:4, IV. *See* N.H. Legislative Service No. 3, Ch. 146 (H.B. 598) 160th Sess. (2007) (repealing N.H. Rev. Stat. Ann. § 77-A:4, IV June 18, 2007, eff. Aug. 17, 2007). The repeal of this

statute provides further demonstration that certiorari review is not warranted.

According to the legislative committee reporting on the new legislation, repealing the statutory provisions was "necessary to avoid confusion and prevent the opportunity for potential abuse." *See* H. H.B. 598-FN-A, 1st yr. of 160th Sess. (N.H. Mar. 21, 2007, House Journal No. 9, 885). In support of the repeal, the Commissioner of the Department of Revenue Administration testified that the statutory subsections of N.H. Rev. Stat. Ann. § 77-A:4 proposed for repeal have been unnecessary since New Hampshire adopted the unitary theory of taxation and should therefore be repealed. *See Repealing Certain Foreign Dividend Deductions Under the Business Profits Tax and Repealing an Exemption to the Real Estate Transfer Tax: Hearing on H.B. 598-FN-A Before the House Ways and Means Comm.*, 2007 Sess., Feb. 16, 2007 (testimony of G. Philip Blatsos, Commissioner of the Department of Revenue Admin., at http://www.gencourt.state.nh.us/house/committees/committee_audio/hearingaudio.aspx?commcode=H28, beginning at 3:08). Further, the harm N.H. Rev. Stat. Ann. § 77-A:4, IV was intended to protect against, the threat of double taxation, is addressed through federal constitutional law, state case law, and N.H. Rev. Stat. Ann. § 77-A itself, *see, e.g.*, N.H. Rev. Stat. Ann. § 77-A:4, X.

CONCLUSION

For the foregoing additional reasons, the Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

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September 18, 2007